law. The Industrial Court is not prohibited by section 60G of the Employment Ordinance from settling disputes regarding retrenchment benefit, especially in the present case where on the pleadings the question of jurisdiction of the court to adjudicate had never been challenged until after the award was made. As stated in the preamble to the Industrial Relations Act, 1967, the Act is to provide for the regulation of the relations between employers and workmen and their trade unions and the prevention and settlement of any differences or disputes arising from their relationship and generally to deal with trade disputes and matters arising therefrom. Under section 27(5), the court shall act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal form; and under subsection (6), in making the award, the court shall not be restricted to the specific relief claimed by the parties or to the demands made by the parties in the course of the trade dispute but may include in the award any matter or thing which it thinks necessary or expedient for the purpose of settling the trade dispute. Thus, subject only to the qualification that it cannot override the provisions of statutory law, the Industrial Court has power in relation to a trade dispute referred to it by the Minister to make an award relating to all or any of the issues in dispute. In the instant case, the dispute is in respect of retrenchment benefits, and as stated earlier on, there is no statutory law which prohibits the Industrial Court from making an award on retrenchment benefits. The so-called restriction imposed by section 60G of the Employment Ordinance is in fact non-existent. The section merely prohibits the court from making such an award to labourers who have not been in continuous service with an employer for more than three years. To my mind, the Industrial Court is entitled to make an award for the settlement of any differences or disputes arising from the relationship between an employer and workmen and their trade unions, even if there is no express obligation on the part of the employer to make the payment as awarded, subject only to the qualification that such award is not prohibited by the provision of any statutory law. In the present case, however, I hold that the applicant is in fact under legal obligation to pay the retrenchment benefits as the claimants are entitled to such benefits under section 60G of the Employment Ordinance. As such, the award made is not wrong in law; and that for reasons already stated earlier on, the Industrial Court has not acted in excess of its jurisdiction in ordering that the claimants as per Schedule B of the award be paid retrenchment benefits.

In the event, I dismiss this motion with costs.

Motion dismissed.

Solicitors: *Ranjit, Thomas & Kula; Skrine & Co.*

CHESEBROUGH-PONDS INTERNATIONAL LTD. v. DIRECTOR-GENERAL OF INLAND REVENUE

[A.C.J. (Mohamed Azmi J.) November 22, 1975]
[Kuala Lumpur — Originating Motion No. 13 of 1973]

Revenue Law — Development tax — Whether development tax payable on royalty received by taxpayer — Taxpayer owning patent and trade mark — Grant of exclusive licence on payment of royalty — Whether taxpayer has development income — Interpretation of taxing statute — Income Tax Ordinance, 1947, s. 33A — "Property" — Meaning of — Supplementary Income Tax Act, 1967, s. 13(2).

In this case the appellant company incorporated in Canada had certain patents and trade marks and they gave an exclusive licence to a company in Malaysia to purchase, manufacture and distribute goods covered by the patent and trade mark. The appellant company received royalties on the sales of the goods manufactured and sold in Malaysia. They were assessed to development tax for the years of assessment 1968-1971. On appeal to the Special Commissioners it was argued for the Director-General of Inland Revenue that the royalties received by the appellant were development income in respect of the letting of its property within the meaning of section 33A of the Income Tax Ordinance 1947 and section 13 of the Supplementary Income Tax Act, 1967. The Special Commissioners found that the appellant company had a development source and development income in respect of trade or business. An appeal by way of case stated was brought to the High Court at the instance of both parties.

Held: (1) royalties as distinguished from rents or premiums received for letting out property situated in Malaysia do not constitute a development source or development income under section 33A of the Income Tax Ordinance, 1947;

(2) under section 13(2) of the Supplementary Income Tax Act, 1967 however, once a person derives income from property situated in Malaysia by letting it out he has a development source and it did not matter whether he let it out for rent or for royalty;

(3) in the present case, the appellant company had a development source for the years of assessment 1968 to 1971 by letting out its property in return for royalty and as such the royalties received during that period are assessable to development tax;

(4) the Director-General of Inland Revenue was correct in conceding that the appellant company was not engaged in a trade or business at the relevant period.

Cases referred to:-

(1) *Oriental Bank* v. *Wright* (1889) L.R. App. Cas. 844, 856.
(2) *Re Micklethwait* 156 E.R. 910.
(3) *Partington* v. *Attorney-General* L.R. 4 App. Cas. 100, 122.
(4) *Lord Advocate* v. *Fleming* [1897] App. Cas. 145, 151-152.
(5) *Tennant* v. *Smith* [1892] App. Cas. 150, 154.
(6) *Cape Brandy Syndicate* v. *Inland Revenue Commissioner* [1921] 1 K.B. 69, 71; (1921) 12 T.C. 358, 366.
(7) *In re a Taxpayer* [1956] M.L.J. 253.
(8) *Commissioner of Income Tax* v. *Hanover Agencies Ltd.* [1967] 1 App. Cas. 681, 688.
(9) *Victoria Park Racing and Recreation Grounds Co. Ltd.* v. *Federal Commissioner of Taxation* (1934) 52 C.L.R. 9, 23-25.
(10) *Selangor Pilot Association (1946)* v. *Government of Malaysia & Anor.* [1975] 2 M.L.J. 66.

ORIGINATING MOTION.

Peter Mooney for the appellant.

Zulkifli Mahmud (Senior Federal Counsel) for the respondent.

Azmi J.: This is an appeal by way of Case Stated by the Special Commissioners of Income Tax under

paragraph 34 of Schedule 5 to the Income Tax Act, 1967 at the instance of both the appellant company and as well as the Director-General of Inland Revenue.

The facts of the case as admitted or proved are that the appellant company was incorporated as a private company in Canada by Letters Patent on July 29, 1955, and was registered as such on May 16, 1957. Its head office is situated in the City of Toronto in the province of Ontario. The Letters Patent confers upon the company various rights and powers. *Inter alia*, the company is empowered to apply for, register, take on licence, purchase or otherwise acquire, hold, develop and sell, assign, license, lease and, subject to the provisions of section 63 of the Companies Act, to pledge or otherwise to dispose of any patents, patent rights, copyrights, labels, designs, prints and brands, trade marks, trade names, formulae, licences, inventions, trade secrets or other information in Canada or elsewhere.

On March 1, 1962, the appellant company (the taxpayer) entered into agreement (Exhibit A2 page 8) with Muller & Phipps (Malaya) Ltd., a company incorporated in the Federation of Malaya. This agreement is entitled "Royalty Technical Service Type Agreement", wherein Muller & Phipps (Malaya) Ltd. were given an exclusive agency to purchase, manufacture and distribute certain goods of the appellant company in the Federation of Malaya, Singapore, North Borneo, Brunei and Sarawak. A Letter of Agreement (Exhibit A2 page 25) also dated March 1, 1962, supplemented the main agreement and formed part of it. On April 6, 1970, the appellant company entered into an agreement, effective from September 1, 1969, with Diethelm & Co. Ltd., a company incorporated under the laws of Switzerland and having a branch office in Kuala Lumpur, replacing Muller & Phipps (Malaya) Ltd. as its agents in Malaysia. This second agreement was substantially the same as the first agreement except that the sales commission allowed to the appellant company's agents, Muller & Phipps (Malaya) Ltd., at the rate of 15% of the monthly net sales of all products manufactured in Malaysia, was increased to 17½% in the agreement with Diethelm & Co. Ltd. Neither of the aforesaid agreements was signed in Malaysia. They were signed partly in Singapore and partly in Melbourne, Australia, and in New York, U.S.A. The appellant company had also entered into similar agreements with agents in other countries in the South East Asia region and the company had an office in Melbourne, Australia, from where it exercised control of its operations in this region. The appellant company had an office in Singapore but had no office or any bank account in Malaysia. Payments due to it by its agents in Malaysia were remitted to its New York office after local audit. The appellant company's personnel from the regional head office in Melbourne paid visits to Malaysia from time to time in connection with the supervision and quality control of manufacture and distribution. These personnel would assist local distributors in marketing techniques employed in sales and distribution of products. In 1967 the appellant company had also stationed a marketing regional manager in Kuala Lumpur, Malaysia, on an experimental basis to supervise, advise and assist the company's agents in Singapore, Malaysia, Thailand and the Philippines under the technical and supervisory aspects of the agreements entered into between the company and its agents in those countries. This experiment did not prove successful and the marketing regional manager was recalled after he had been stationed for about fifteen months in Kuala Lumpur. Personnel from the finance section of the regional head office in Melbourne also visited Malaysia. All these personnel, including the marketing regional manager who was stationed in Kuala Lumpur for about fifteen months, were in no way concerned or involved in the royalty aspect of the agreements.

The appellant company had registered trade marks with the Registrar of Trade Marks, Malaysia. Under the terms of the agreements with the appellant company's agents, the latter were obliged to use the trade marks only in respect of products manufactured, prepared or packed by the agents strictly in accordance with the formulae, specifications, patents, processes, techniques, designs and directions sent to them from time to time and not otherwise. All labels on products manufactured in Malaysia had to bear the name of the appellant company.

Thus, by these agreements, in consideration of the royalties to be paid by Muller & Phipps (Malaya) Ltd. and subsequently Diethelm & Co. Ltd., Muller & Phipps and subsequently Diethelm were to have an exclusive agency in Malaysia to purchase, manufacture and distribute certain goods of the appellant company. Pursuant to the terms of the said agreements, the agents manufactured and sold the appellant company's products in accordance with the conditions laid down in the agreements. The actual manufacture of the products was done by A.S. Watson & Co. of Petaling Jaya, Malaysia. All labels on products manufactured here bore the marks of the appellant company. As a result of the royalty and technical service agreements, the appellant company acquired two sources of income — firstly, the technical, supervising and service fee at the rate of 5% on the actual monthly net sales and, secondly, a royalty at the rate of 12.5% on the actual monthly net sales of all products manufactured and sold in Malaysia.

The only question is whether the appellant company have correctly been assessed to tax in the additional sum of $6,760.90 being development tax on royalties for the assessment year 1967 and in the sum of $40,771.05 being development tax on royalties for the assessment year 1968 to 1971 — thus, making a total sum of $47,531.95. The break-down figures of the royalties and development tax imposed thereon are as follows:—

Year	*Royalty*	*Development Tax*
1967	$135,218.00	$ 6,760.90
1968	$215,401.00	$10,770.05
1969	$204,212.00	$10,210.60
1970	$175,249.00	$ 8,762.45
1971	$220,559.00	$11,027.95
Total:	$950,639.00	$47,531.95

In short, for the years of assessment 1967 to 1971 inclusive, a supplementary tax known as development tax was imposed on the company's aforesaid income under section 33A of the Income Tax Ordinance, 1947

for the year of assessment 1967, and under section 13 of the Supplementary Income Tax Act, 1967 for the years of assessment 1968 to 1971. The appellant company disputes the validity of the imposition of development tax on royalties received by it during the aforesaid period. There is no tax dispute regarding the technical, supervising and service fee received by the appellant company under the agreements.

Before the Special Commissioners, it was contended on behalf of the appellant company that:—

(a) the royalties received by the appellant company were not development income from a development source within the meaning of section 33A of the Income Tax Ordinance, 1947, and section 13 of the Supplementary Income Tax Act, 1967;

(b) the rents and premiums derived from property and the letting of property as stated in the two said sections, respectively, must relate to property which is tangible and that, by giving exclusive licences to its agents in Malaysia to purchase, manufacture and distribute its products, the appellant company cannot be said to have let out its property situated in Malaysia;

(c) the appellant company had no trade or business within the meaning of section 33A of the Income Tax Ordinance, 1947, and section 13 of the Supplementary Income Tax Act, 1967, in so far as the receipt of royalties was concerned and that, therefore, royalties received by the company were not development income from any trade or business; and

(d) therefore, royalty income received by the appellant company for the years of assessment under appeal was not assessable to development tax and that the development tax on the appellant company for the years of assessment 1967 to 1971, should be discharged.

On the other hand, it was contended on behalf of the Director-General of Inland Revenue that:—

(a) the patents of the appellant company which had been registered as trade marks in Malaysia constituted property belonging to the company and that, by giving exclusive licences to its agents in Malaysia to make use of the trade marks in return for royalty payments, the appellant company was in fact letting out its property situated in Malaysia;

(b) the appellant company was liable to development tax for the years of assessment 1967 to 1971, inclusive, because the royalties received by it constituted development income in respect of rents or premiums derived from property and from the letting of its property within the meaning of section 33A of the Income Tax Ordinance, 1947, and section 13 of the Supplementary Income Tax Act, 1967; and

(c) therefore, the assessments of development tax for the said years of assessment should be confirmed.

The Special Commissioners rejected the contention of the Director-General of Inland Revenue that patents or trade marks constitute "property" within the meaning of the development tax legislation, but they came to the conclusion that for the year of assessment 1967 the appellant company had a development source and development income in respect of trade or business within the meaning of section 33A of the Income Tax Ordinance 1947, and that the sum of $135,218 received by the company as royalties in the said year of assessment constituted development income assessable to development tax. Similarly, for the years of assessment 1968 to 1971 it was held that the appellant company had a development source consisting of trade or business within the meaning of section 13 of the Supplementary Income Tax Act 1967, and that the sum of $815,421 received by the company as royalties for the said years of assessment constituted development tax in accordance with the provisions of Part III of the Supplementary Income Tax Act 1967. They accordingly ordered that the development tax in the total sum of $47,531.95 for the years of assessment 1967 to 1971 be confirmed. It should be noted that they came to the conclusion that the appellant company had a development source and development income *in respect of a trade or business* within the meaning of section 33A of the 1947 Ordinance, and similarly had a development source *consisting of a trade or business* within the meaning of section 13 of the 1967 Supplementary Income Tax, despite the admission made by counsel for the Director-General of Inland Revenue that the appellant company was not engaged in a trade or business in so far as the royalty income of the company was concerned.

In the event, apart from the application of the appellant company to have a Case Stated for the opinion of the High Court, the Director-General of Inland Revenue also requested the Special Commissioners to state a case for the opinion of the High Court in respect of that part of the Deciding Order wherein they rejected the contention that the patents or trade marks constitute property within the meaning of the development tax legislation.

It should be emphasised once again that the issue in this case concerns royalty. We are concerned solely with development tax on royalty and not with income tax on royalty.

Now, section 33A provides:

"(1) Subject to the provisions of the Fifth Schedule, a tax to be known as *development tax shall be assessed* for the year of assessment 1967 and subsequent years of assessment, *upon every person having development income,* ascertained under that Schedule for any such year, *or having a development source* at any time in that year, in an amount ascertained in accordance with that Schedule, and the development tax so assessed shall be payable for that year, and save as otherwise provided in that Schedule the provisions of this Ordinance relating to a company or to any other person, as the case may be, shall apply, with any necessary modifications, for all purposes to development tax as they do to income tax and, subject to any such modifications, development tax shall be deemed for all the purposes of this Ordinance to be income tax.

(2) For the purposes of this section and the Fifth Schedule *a person shall be treated as having a development source* in a year of assessment *if for income tax he has statutory income for* that year in respect of any trade, *business, profession or vocation or in respect of rents or premiums derived from property situated in the States of Malaya,* or if he has a loss incurred by him in any trade, business, profession or vocation which, if it had been a profit, would have been statutory income for that year in respect of the trade, business, profession, or vocation or if he has a property loss (as defined in that Schedule) for that year:

Provided that where an individual has for a year of assessment statutory income or such a property loss from the letting of a residence in which he normally resides and the statutory income or that property loss, as the case may be, does not arise from the habitual letting of that residence, he shall be treated as not having a development source in respect of that residence in that year."

(See amendments to Income Tax Ordinance 1947 by Finance Act No. 4 of 1967).

For the assessment years 1968 to 1971, section 13 of the Supplementary Income Tax Act, 1967 (revised — 1971) provides:

"(1) Subject to this Part, a supplementary income tax (to be known as *development tax*) *shall be charged for each year* of assessment *upon every person having a development source* in that year in an amount ascertained in accordance with this Part.

(2) For the purposes of this Part, *a development source of a person means a source of his consisting of a business or the letting of property situated in Malaysia,* and *he shall be treated as having a development source in a year of assessment if he has statutory income from that source for that year* (or, in the case of a source consisting of a business, if he has statutory income for that year or an adjusted loss for the basis period for that year) or a property loss for that year."

It is a well settled principle of law that the rule of strict construction should be applied in the interpretation of statutes which impose pecuniary burdens on the subject. If a statute professes to impose a charge, "the rule", said the Judicial Committee in *Oriental Bank* v. *Wright*[1] is "that the intention to impose a charge upon a subject must be shown by clear and unambiguous language". Parke B. in *Re Micklethwait*[2] also expressed similar views when he said: "It is a well-established rule that the subject is not to be taxed without clear words for that purpose; and also that every Act of Parliament must be read according to the natural construction of its words". Again in *Partington* v. *Attorney-General,*[3] Lord Cairns said: "I am not at all sure that, in a case of this kind — a fiscal case — form is not amply sufficient, because, as I understand the principle of all fiscal legislation, it is this. If the person sought to be taxed comes within the letter of the law, he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be. In other words, if there be admissible, in any statute, what is called an equitable construction certainly such a construction is not admissible in a taxing statute, where you simply adhere to the words of the statute". Lord Halsbury said in *Lord Advocate* v. *Fleming,*[4] "I am only reiterating what has been said over and over again in dealing with taxing Acts, when I say that we have no governing principle of the Act to look at; we have simply to go on the Act itself to see whether the duty claimed under it is that which the Legislature has enacted; and in *Tennant* v. *Smith,*[5] he said: "... in a taxing Act it is impossible, I believe, to assume any intention, any governing purpose in the Act, to do more than take such tax as the statute imposes .... Cases, therefore, under the Taxing Acts always resolve themselves into a question whether or not the words of the Act have reached the alleged subject of taxation". Finally, it is necessary to refer to the often quoted words of Rowlatt J. in *Cape Brandy Syndicate* v. *Inland Revenue Commissioners*: [6]

"... in a taxing Act clear words are necessary to tax the subject. But it is often endeavoured to give to that maxim a wide and fanciful construction. It does not mean that words are to be unduly restricted against the Crown or that there is to be any discrimination against the Crown in such Acts. It means this, I think; it means that in taxation you have to look simply at what is clearly said. There is no room for any intendment; there is no equity about a tax: there is no presumption as to a tax; you read nothing in; you imply nothing, but you look fairly at what is said and at what is said clearly and that is the tax."

It is the contention of learned counsel for the appellant company that on the authority of the Court of Appeal decision in *re A Tax-Payer,*[7] it is the duty of the Special Commissioners to pin-point the particular source of income, and this, they have failed to do. Learned counsel also urged this court to ignore the decision of the Privy Council in *Commissioner of Income Tax* v. *Hanover Agencies Ltd.*[8] which is in conflict with our 1956 Court of Appeal decision on the grounds that Hanover's case deals with the Jamaican law and there is no equivalent provision in Jamaican statute to our section 33A. It is also argued that in the 1947 Ordinance "royalties" is expressly included in section 10(1)(f) which reads:

"Income tax shall, subject to the provisions of this Ordinance, be payable at the rate or rates specified hereinafter for each year of assessment upon the income of any person accruing in or derived from the States of Malaya or received in the States of Malaya from outside the States of Malaya in respect of —

rents, royalties, premiums and any other profits arising from property",

but the word is not to be found in section 33A, and, as such, income from royalty is not subject to development tax. On the authority of *Victoria Park Racing and Recreation Grounds Co. Ltd.* v. *The Federal Commissioner of Taxation,*[9] which dealt with section 5(1)(c) of the Australian Income Tax Act, 1931, it is further argued that royalty should not be regarded as income, and it is further submitted the word "royalties" in section 33A(2) can only mean tangible property and it cannot fall within the word "rents" or "premiums" in that sub-section. In short, it is argued that development tax is not assessable on royalties.

Similarly, under section 13(2) of the 1967 Act, it is the contention of learned counsel for the appellant company that the word "property" must mean tangible property. The fact that the trade mark is registered in Malaysia does not, it is argued, make it situated in Malaysia as envisaged in the second limb of that sub-section. Based on the rules of construction of taxing Acts, as stated earlier on, it seems to me that there is no real ambiquity in the meaning of section 33A. Sub-section (1) of that section clearly states that development tax shall be assessed upon every person having development income or having development source at any time in the year of assessment 1967; and under sub-section (2), a person shall be treated as having a development source if for income tax he has statutory income for that year —

in respect of any trade, business, profession or vocation (first limb) or

in respect of rents or premiums derived from property situated in the States of Malaya (second limb).

Since the word "property" has not been defined in the Act, for the purpose of construction, its natural and normal meaning should be applied. The word is defined, *inter alia*, in the *Shorter Oxford Dictionary* as: — "The condition of being owned by or belonging to some person or persons; hence, the fact of owning a thing; the holding of something as one's own; the right (especially the exclusive right) to the possession, use, or disposal of anything; ownership, proprietorship".

To my mind, there is no merit in the argument that the word "property" in section 33A(2) of the 1947 Ordinance and section 13(2) of the 1967 Act should be confined to tangible property. The appellant company's trade mark having been registered with the Registrar of Trade Marks Malaysia gives the company exclusive right to its use. As such, I am of the view that all registered patents or trade marks constitute "property" within the meaning of development tax legislation. I am fortified in this opinion by the analogy which can be drawn in the Federal Court case of *Selangor Pilot Association (1946)* v. *Government of Malaysia & Anor.*[10] where there was no dispute at all in the fact that a "goodwill", though intangible, is property within the meaning of Article 13 of the Federal Constitution. Indeed, before the Special Commissioners the appellant company all along took the stand that patents or trade marks could be regarded as property whereby income might be obtained as a result of investment on patents or trade marks. (See also paragraph (b)(iii) of appellant company's Letters Patent in Agreed Bundle of Documents). If I am right in holding that the Malaysian registered trade mark or patent of the appellant company is property situated in this country within the meaning of section 33A and section 13, then the next issue to be decided is whether under section 33A of the 1947 taxing legislation the royalty received can be said to be rents or premiums derived from the said property so as to constitute a development source. Unlike section 10(1)(f), the word 'royalties' has been left out in section 33A(2). Applying the rule of strict construction, I am of the opinion that royalties as distinguished from rents or premiums received for letting out property situated in this country do not constitute a development source or development income under the 1947 taxing legislation. Apart from section 10(1)(f), the word 'royalties' has also been left out in the definition of the term 'property loss' under paragraph 1 Fifth Schedule of the 1947 Ordinance. In the event, I hold the royalties received by the appellant company for the assessment year 1967 amounting to $6,760.90 are not assessable to development tax under the second limb of section 33A(2).

But, under section 13(2) of the 1967 Act, it is provided in the second limb of the said sub-section that a development source of a person means a source of his, consisting of the letting of property situated in Malaysia. To my mind, the fact that the word 'royalties' is not to be found in section 13 is irrelevant. Under section 13(2), once a person derives income from property situated in Malaysia by letting it out, he has a development source, and it does not matter whether he lets it out for rent or for royalty. This is consistent with the definition of the term 'property loss' under section 12 Part III of the Supplementary Income Tax Act No. 46 of 1967 where the word 'royalties' has been included in addition to 'rents' and 'premiums'. In the present case, the appellant company had a development source for the years of assessment 1968 to 1971 by letting out its property in return for royalty. As such, the royalties received during that period are assessable to development tax.

There is thus a distinction between section 33A of the 1947 Ordinance and section 13 of the 1967 Act. Under the latter section, I hold that the patent or trade mark of the appellant company which has been registered in Malaysia constitutes property belonging to the company, and by giving exclusive licence to its agents in Malaysia to make use of the trade mark in return of royalty payments, the appellant company is in fact letting out its property situated in Malaysia. The appellant company is accordingly liable to development tax for the years of assessment 1968 to 1971 inclusive, because the royalties received by it constitute development source. But the appellant company has no such development source for the assessment year 1967, because, under section 33A of the 1947 Ordinance, royalties received from property situated in the States of Malaya do not constitute a development source or development income.

Having regard to my conclusion, it seems unnecessary for me to express my opinion as to whether the appellant company is in the alternative caught under the first limb of section 33A(2) and section 13(2), on the question as to whether it has a development source in respect of a trade, business, profession or vocation (section 33A) or had a development source consisting of a business (section 13). Before me, learned counsel for the respondent has adopted the Special Commissioners' arguments, in the alternative. In my view, having conceded during the submission before the Special Commissioners that the appellant company was not engaged in a trade or business in so far as the royalty income of the company was concerned, it is not proper on the face of the record for the respondent now to submit otherwise. Having regard to the facts of this case as admitted and proved, I am of the opinion that the Director-General of Inland Revenue was correct in conceding that the appellant company was not engaged in a trade or business at the relevant period and, as such, the appellant company is not assessable to development tax under the first limb of section 33A(2) and section 13(2) of the respective taxing legislation.

Accordingly, I vary the Special Commissioners' order in that only the development tax in the total sum of $40,771.05 for the years of assessment 1968 to 1971 inclusive, be confirmed, although on different grounds. The appeal is accordingly allowed to the extent that the royalty income received by the appellant company for the year of assessment 1967 was not assessable to development tax, and that the development tax in the sum of $6,760.90 for that year should be discharged. Under the circumstances of this case, I make no order as to costs.

Order accordingly.

Solicitors: *Skrine & Co.*